



# California Fair Political Practices Commission

July 15, 1986

Dorothy Cornelius  
Cupertino City Clerk  
P.O. Box 580  
Cupertino, CA 95015

Re: Your Request for Advice  
Our File No. A-86-157

Dear Ms. Cornelius:

This is in response to your request for advice on behalf of Deborah Nobel, Vice Chairperson of the Cupertino Architectural and Site Approval Committee.

## QUESTION

As Director of Sales for a hotel located near the Cupertino city limits, is Ms. Nobel prohibited from participating in decisions by the Cupertino Architectural and Site Approval Committee on applications to build hotels in Cupertino?

## CONCLUSION

Ms. Nobel may not participate in a decision on an application to build a hotel in Cupertino if the decision will have a reasonably foreseeable material financial effect on the business entity which employs her.

## FACTS

As part of the building review process, the Cupertino Architectural and Site Approval Committee (ASAC) reviews architectural and site design, landscaping, lighting and signs for commercial, retail and industrial applications for building permits and makes a recommendation to the City Council for approval or denial. The purpose of the Committee is to promote the orderly development of the City; to promote the stability of land values, development and investment for the general welfare; to maintain the character and integrity of neighborhoods; to prevent adverse effects of erection, alteration or addition to buildings, structures, signs, lighting or landscaping and to determine compliance with ordinances relative to zoning and other pertinent ordinances. The ASAC has the authority for final decisions in regard to signage. In other matters, their review and recommendation is advisory.

Ms. Nobel is Director of Sales for the Woodmark Hotel. This is a 60-room facility located in Santa Clara, approximately one block outside the Cupertino City limits. The corporate office, where Ms. Nobel's office is located, is in Cupertino. The Woodmark, which is owned by a privately held limited partnership, has assets of \$6 million. Last year, the Woodmark Hotel had gross earnings of \$2 million, but had no net earnings.

The City of Cupertino has no hotels at this time. However, there are several applications for hotels pending. Although the Woodmark is in Santa Clara, the make-up of the area is such that hotels located in San Jose, Santa Clara, Sunnyvale, and, in the future Cupertino, draw from the same market.

#### ANALYSIS

The Political Reform Act (the "Act")<sup>1/</sup> requires that public officials disqualify themselves from making or in any way participating in any decision in which they have a financial interest. Section 87100.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

\* \* \*

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(c) and (d).

Ms. Nobel is an employee of the Woodmark Hotel and the Woodmark Hotel is a source of income to her. Sections 87103(c) and (d). Accordingly, if Ms. Nobel is considered to be a "public official," she may not participate in any decision which will have a reasonably foreseeable material financial effect on the Woodmark Hotel.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

The term "public official" includes any "member" of an agency who makes or participates in the agency's decisions. Section 82048. In the present situation, the ASAC's decisions, with the exception of those relating to signage, are considered to be advisory. However, if the ASAC's substantive recommendations are, and over an extended period of time have been, regularly approved without significant amendment or modification by the other public officials or governmental agencies involved in the building review process, Ms. Nobel is considered to be a "member" of a public agency, and thus a "public official." 2 Cal. Adm. Code Section 18700(a)(1). You have indicated that the ASAC's recommendations are normally placed on the consent calendar and are approved without modification by the other agencies involved in the building review process. Accordingly, Ms. Nobel is a public official and may not participate in any decision on an application to build a hotel, if the decision will have a reasonably foreseeable material financial effect on the Woodmark Hotel.

With a business entity the size of the Woodmark Hotel, the effect of a decision will be considered to be material if:

- (1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or
- (2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or
- (3) The decision will result in an increase or decrease in the value of assets or liabilities of \$10,000 or more.

2 Cal. Adm. Code Section 18702.2(g).

For instance, if it is reasonably foreseeable that construction of a new hotel, in Cupertino, would result in a decrease in room and restaurant revenues to the Woodmark of \$10,000 or more during a fiscal year, disqualification would be required.

In addition, if the Woodmark Hotel itself has an application before the ASAC, Ms. Nobel is automatically disqualified from participating in the decision. 2 Cal. Adm. Code Section 18702.1.

You have not presented a specific pending decision for our analysis. If you wish to discuss a particular decision, please let us know and we will be pleased to assist you with the analysis.

Dorothy Cornelius  
July 15, 1986  
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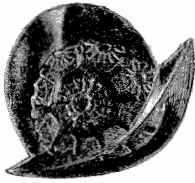
I trust this responds to your inquiry. If you should have any questions, please contact me at (916) 322-5901.

Sincerely,

A handwritten signature in black ink, appearing to read "John G. McLean". The signature is fluid and cursive, with the first name "John" being the most prominent.

John G. McLean  
Counsel  
Legal Division

JGM:km



10300 Torre Avenue  
Cupertino, California 95014  
Telephone: (408) 252-4505

## City of Cupertino

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P.O. Box 580  
Cupertino, California 95015

### OFFICE OF THE CITY CLERK

January 13, 1986

Fair Political Practices Commission  
Attention: Technical Assistance and Analysis Division  
P. O. Box 807  
Sacramento, CA 95804

Deborah Nobel, Vice Chairperson of Cupertino Architectural and Site Approval Committee (ASAC) has requested an opinion regarding possible conflict of interest.


The Architectural and Site Approval Committee reviews architectural and site design, landscaping, lighting and signs for commercial, retail and industrial applications for building permits and makes a recommendation to the City Council for approval or denial. The purpose of the Committee is to promote the orderly development of the City; to promote the stability of land values, development and investments for the general welfare; to maintain the character and integrity of neighborhoods; to prevent adverse effects of erection, alteration or addition to buildings, structures, signs, lighting or landscaping and to determine compliance with ordinances relative to zoning and other pertinent ordinances.

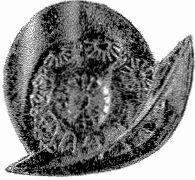
Ms. Nobel is Director of Sales for the Woodmark Hotel. This is a 60-room facility in Santa Clara, just outside Cupertino City limits (about 1 block). The corporate office, where Ms. Nobel's office is located, is in Cupertino. The Director of Sales is a full-time position in the income category of over \$10,000 a year.

The City of Cupertino has no hotels at this time. However, there are several applications for hotels pending. Although the Woodmark is in Santa Clara, the make-up of the area is such that hotels located in San Jose, Santa Clara, Sunnyvale, and, in the future, Cupertino draw from the same market.

Ms. Nobel is asking if, when hotel applications come before ASAC, it will be necessary for her to abstain.

Sincerely,

  
DOROTHY CORNELIUS  
CITY CLERK  
CITY OF CUPERTINO



City of Cupertino

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10300 Torre Avenue  
Cupertino, California 95014  
Telephone: (408) 252-4505

P.O. Box 580  
Cupertino, California 95015

OFFICE OF THE CITY CLERK

June 20, 1986

Fair Political Practices Commission  
Attn: John McLean  
P. O. Box 807  
Sacramento, CA 95804-0807

REQUEST FOR OPINION

In regard to my request for an opinion of potential conflict in the case of Deborah Nobel, listed below is the additional information you requested:

Woodmark Hotel gross earnings last year: \$2 million.

Net earnings: None.

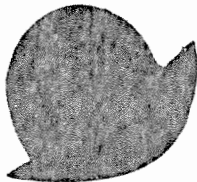
This is a privately owned company.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dorothy Cornelius".

DOROTHY CORNELIUS  
CITY CLERK

rw



## City of Cupertino

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10300 Torre Avenue  
Cupertino, California 95014  
Telephone: (408) 252-4505

P.O. Box 580  
Cupertino, California 95015

### OFFICE OF THE CITY CLERK

Fair Political Practices Commission  
Attn: Jeanette Turvill, Legal Division  
P.O. Box 807  
Sacramento, CA 95804

REQUEST FOR ADVICE: DEBORAH NOBEL, ARCHITECTURAL & SITE APPROVAL  
COMMITTEE

In response to your letter dated February 19, 1986 the following  
information is provided.

1. Ms. Nobel has requested I obtain this advice on her behalf.  
Her mailing address is: Deborah Nobel  
22490 Santa Paula Avenue  
Cupertino, CA 95014
2. The Architectural and Site Approval Committee has the authority  
for final decisions in regard to signage. In other matters,  
although advisory, their review and recommendation is considered  
part of the building review process.
3. As per Ms. Nobel the fiscal size of the Woodmark Hotel is  
\$6 million and it is a privately held, limited partnership.

If more information is necessary please contact me. Also, upon  
issuing your written advice, please send a copy to Ms. Nobel at  
the above address.

Sincerely,

Dorothy Cornelius  
City Clerk  
City of Cupertino

2/25/86



# California Fair Political Practices Commission

June 18, 1986

Dorothy Cornelius, City Clerk  
City of Cupertino  
P.O. Box 580  
Cupertino, CA 95015

Dear Ms. Cornelius:

I am writing to confirm our telephone conversation of June 4, 1986.

We will be happy to provide written advice; however, in order to respond to your letter, we will need the additional information listed below. Regulation 2 Cal. Adm. Code Section 18239 (copy enclosed) requires that this information be provided before we can act on your request for advice.

Commission regulation 2 Cal. Adm. Code Section 18702.2 (copy enclosed) establishes guidelines for determining whether the effect of a decision on a business entity will be considered material. The regulation establishes different tests depending on the size of the business entity. Please let us know which test would be applicable to the Woodmark Hotel.

Please provide this information by July 15, 1986, so that we can respond to your letter in a timely manner. If you cannot provide the information by that date, please contact this office. If we do not hear from you by July 15, 1986, we will have to assume that you have withdrawn your request for advice.

When we have received the additional information, your request for advice will be assigned to a member of our staff for review and response. Written advice is generally provided within 21 working days after all pertinent information has been received.

Please contact this office at (916) 322-5901 if you have any questions regarding this letter.

Sincerely,

John G. McLean  
Counsel  
Legal Division

JGM:sm





# California Fair Political Practices Commission

May 13, 1986

Dorothy Cornelius  
City Clerk  
10300 Torre Avenue  
Cupertino, CA 95014

Re: 86-157

Dear Ms. Cornelius:

Your letter requesting advice under the Political Reform Act has been received on May 12, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in black ink, appearing to read "John G. McLean".

John G. McLean  
Counsel  
Legal Division

JGM:plh



# California Fair Political Practices Commission

February 19, 1986

Dorothy Cornelius, City Clerk  
City of Cupertino  
P.O. Box 580  
Cupertino, CA 95015

Dear Ms. Cornelius:

We have received your January 13, 1986, letter requesting written advice concerning a possible conflict of interest.

We will be happy to provide written advice; however, in order to respond to your letter, we will need the additional information listed below. Regulation 2 Cal. Adm. Code Section 18329 (copy enclosed) requires that this information be provided before we can act on your request for advice.

(1) Your statement that you have been authorized by Deborah Nobel to obtain this advice on her behalf as well as mailing address for Ms. Nobel.

(2) Does the Architectural and Site Approval Committee make recommendations to the city council to actually approve or deny a construction permit, or just certain aspects of the permit, such as landscaping, lighting, etc?

(3) In 1985, the Commission adopted a regulation (Section 18702.2), which provides guidelines for determining when a decision will have a material financial effect on a business entity. This regulation provides that a higher disqualification threshold will apply to large corporations than to small companies.

In order for us to apply this regulation to the scenerio provided in your letter, we need to know the fiscal size of the Woodmark Hotel and whether it is a privately or publicly held corporation.

Dorothy Cornelius, City Clerk  
February 19, 1986  
Page 2

Please provide this information by March 19, 1986, so that we can respond to your letter in a timely manner. If you cannot provide the information by that date, please contact this office. If we do not hear from you by March 19, 1986, we will have to assume that you have withdrawn your request for advice.

When we have received the additional information, your request for advice will be assigned to a member of our staff for review and response. Written advice is generally provided within 21 working days after all pertinent information has been received.

Please contact this office at (916) 322-5901 if you have any questions regarding this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeanette Turvill".

Jeanette Turvill  
Legal Assistant  
Legal Division

JT:plh  
Enclosures